

110TH CONGRESS
1ST SESSION

S. RES. 303

Censuring the President and the Attorney General.

IN THE SENATE OF THE UNITED STATES

Mr. FEINGOLD (for himself and Mr. HARKIN) submitted the following resolution; which was referred to the Committee on

RESOLUTION

Censuring the President and the Attorney General.

1 *Resolved,*

2 **SECTION 1. BASIS FOR CENSURE.**

3 (a) NATIONAL SECURITY AGENCY WIRETAPPING.—

4 The Senate finds the following:

5 (1) Congress passed the Foreign Intelligence
6 Surveillance Act of 1978 (50 U.S.C. 1801 et seq.),
7 and in so doing provided the executive branch with
8 clear authority to wiretap suspected terrorists inside
9 the United States.

10 (2) Section 201 of the Foreign Intelligence Sur-
11 veillance Act of 1978 states that it and the criminal
12 wiretap law are the “exclusive means by which elec-

1 tronic surveillance” may be conducted by the United
2 States Government, and section 109 of that Act
3 makes it a crime to wiretap individuals without com-
4 plying with this statutory authority.

5 (3) The Foreign Intelligence Surveillance Act of
6 1978 both permits the Government to initiate wire-
7 tapping immediately in emergencies as long as the
8 Government obtains approval from the court estab-
9 lished under section 103 of the Foreign Intelligence
10 Surveillance Act of 1978 (50 U.S.C. 1803) within
11 72 hours of initiating the wiretap, and authorizes
12 wiretaps without a court order otherwise required by
13 the Foreign Intelligence Surveillance Act of 1978 for
14 the first 15 days following a declaration of war by
15 Congress.

16 (4) The Authorization for Use of Military Force
17 that became law on September 18, 2001 (Public
18 Law 107-40; 50 U.S.C. 1541 note), did not grant
19 the President the power to authorize wiretaps of
20 Americans within the United States without obtain-
21 ing the court orders required by the Foreign Intel-
22 ligence Surveillance Act of 1978.

23 (5) The President’s inherent constitutional au-
24 thority does not give him the power to violate the ex-

1 plicit statutory prohibition on warrantless wiretaps
2 in the Foreign Intelligence Surveillance Act of 1978.

3 (6) George W. Bush, President of the United
4 States, authorized the National Security Agency to
5 wiretap Americans within the United States without
6 obtaining the court orders required by the Foreign
7 Intelligence Surveillance Act of 1978 for more than
8 5 years.

9 (7) Alberto R. Gonzales, as Attorney General of
10 the United States and as Counsel to the President,
11 reviewed and defended the legality of the President's
12 authorization of wiretaps by the National Security
13 Agency of Americans within the United States with-
14 out the court orders required by the Foreign Intel-
15 ligence Surveillance Act of 1978.

16 (8) President George W. Bush repeatedly mis-
17 led the public prior to the public disclosure of the
18 National Security Agency warrantless surveillance
19 program by indicating his Administration was rely-
20 ing on court orders to wiretap suspected terrorists
21 inside the United States.

22 (9) Alberto R. Gonzales misled Congress in
23 January 2005 during the hearing on his nomination
24 to be Attorney General of the United States by indi-
25 cating that a question about whether the President

1 has the authority to authorize warrantless wiretaps
2 in violation of statutory prohibitions presented a
3 “hypothetical situation,” even though he was fully
4 aware that a warrantless wiretapping program had
5 been ongoing for several years.

6 (10) In statements about the supposed need for
7 the National Security Agency warrantless surveil-
8 lance program after the public disclosure of the pro-
9 gram, President George W. Bush falsely implied
10 that the program was necessary because the execu-
11 tive branch did not otherwise have authority to wire-
12 tap suspected terrorists inside the United States.

13 (11) Attorney General Alberto R. Gonzales, de-
14 spite his admitted awareness that congressional crit-
15 ics of the program support wiretapping terrorists in
16 accordance with the Foreign Intelligence Surveil-
17 lance Act of 1978, attempted to create the opposite
18 impression by making public statements such as
19 “[s]ome people will argue that nothing could justify
20 the Government being able to intercept conversations
21 like the ones the Program targets”.

22 (12) President George W. Bush inaccurately
23 stated in his January 31, 2006, State of the Union
24 address that “[p]revious Presidents have used the
25 same constitutional authority I have, and federal

1 courts have approved the use of that authority.”,
2 even though the Administration has failed to identify
3 a single instance since the Foreign Intelligence Sur-
4 veillance Act of 1978 became law in which another
5 President has authorized wiretaps inside the United
6 States without complying with the Foreign Intel-
7 ligence Surveillance Act of 1978, and no Federal
8 court has evaluated whether the President has the
9 inherent authority to authorize wiretaps inside the
10 United States without complying with the Foreign
11 Intelligence Surveillance Act of 1978.

12 (13) At a Senate Judiciary Committee hearing
13 on February 6, 2006, Attorney General Alberto R.
14 Gonzales defended the President’s misleading state-
15 ments in the January 31, 2006, State of the Union
16 address.

17 (14) Attorney General Alberto R. Gonzales has
18 misled Congress and the American people repeatedly
19 by stating that there was no serious disagreement
20 among Government officials “about” or “relate[d]
21 to” the National Security Agency program con-
22 firmed by the President.

23 (15) According to testimony from former Dep-
24 uty Attorney General James Comey, Alberto R.
25 Gonzales, while serving as Counsel to the President,

1 participated in a visit to then-Attorney General John
2 Ashcroft in the intensive care unit of the hospital in
3 an attempt to convince Mr. Ashcroft to overturn the
4 decision by Mr. Comey, then serving as Acting At-
5 torney General due to Mr. Ashcroft's illness, not to
6 certify the legality of a classified intelligence pro-
7 gram, in what Mr. Comey described as "an effort to
8 take advantage of a very sick man".

9 (b) DETAINEE AND TORTURE POLICY.—The Senate
10 finds the following:

11 (1) The United States is a party to the Conven-
12 tion Against Torture, the Geneva Conventions, and
13 the International Covenant on Civil and Political
14 Rights.

15 (2) Common Article 3 of the Geneva Conven-
16 tions requires that detainees in armed conflicts other
17 than those between nations "shall in all cir-
18 cumstances be treated humanely," and the Third
19 Geneva Convention on the Treatment of Prisoners of
20 War provides additional protections for detainees
21 who qualify as "prisoners of war".

22 (3) United States law criminalizes any "act spe-
23 cifically intended to inflict severe physical or mental
24 pain or suffering" under sections 2340 and 2340A
25 of title 18, United States Code, and the War Crimes

1 Act (18 U.S.C. 2441) and recognizes the gravity of
2 such offenses by further providing for civil liability
3 under the Torture Victim Protection Act and the
4 Alien Tort Claims Act.

5 (4) In a draft memorandum dated January 25,
6 2002, Alberto R. Gonzales, in his capacity as Coun-
7 sel to the President, argued that the protections of
8 the Third Geneva Convention should not be afforded
9 to Taliban and al Qaeda detainees, and described
10 provisions of the Convention as “quaint” and “obso-
11 lete”.

12 (5) The January 25, 2002, memorandum by
13 then-Counsel to the President Alberto R. Gonzales
14 cited “reduc[ing] the threat of domestic criminal
15 prosecution” as a “positive” consequence of dis-
16 avowing the Geneva Conventions’ applicability, as-
17 serting that such a disavowal “would provide a solid
18 defense to any future prosecution” in the event a
19 prosecutor brought charges under the domestic War
20 Crimes Act.

21 (6) Secretary of State Colin Powell responded
22 in a January 26, 2002, memorandum that such an
23 attempt to evade the Geneva Conventions would “re-
24 verse over a century of U.S. policy and practice in

1 supporting the Geneva Conventions and undermine
2 the protections of the rule of law for our troops”.

3 (7) Despite the warnings of the Secretary of
4 State and in contravention of the language of the
5 Third Geneva Convention, President George W.
6 Bush announced on February 7, 2002, that—

7 (A) he did not consider the Convention to
8 apply to al Qaeda fighters; and

9 (B) Taliban detainees would not be enti-
10 tled to “prisoner of war” status under the Con-
11 vention, despite the fact that Article 5 of the
12 Convention and United States Army regulations
13 expressly require such determinations to be
14 made by a “competent tribunal”.

15 (8) The Supreme Court, in *Hamdan v. Rums-*
16 *feld*, confirmed that Common Article 3 of the Gene-
17 va Conventions applies to Taliban forces and al
18 Qaeda forces, and characterized a central legal
19 premise by which the President sought to avoid the
20 obligations of international law as “erroneous”.

21 (9) Alberto R. Gonzales, acting as Counsel to
22 the President, solicited and accepted the August 1,
23 2002, Office of Legal Counsel memorandum entitled
24 “Standards of Conduct for Interrogation under 18
25 U.S.C. §§ 2340–2340A”, which took the untenable

1 position that “mere infliction of pain” is not “tor-
2 ture” unless “the victim ... experiences intense pain
3 or suffering of the kind that is equivalent to the
4 pain that would be associated with serious physical
5 injury so severe that death, organ failure, or perma-
6 nent damage resulting in a loss of significant body
7 function will likely result.”.

8 (10) According to the “Review of Department
9 of Defense Detention Operations and Detainee In-
10 terrogation Techniques” (the “Church Report”),
11 issued on March 7, 2005, then-Secretary of Defense
12 Donald Rumsfeld on December 2, 2002, authorized
13 the use on Guantanamo Bay detainees of harsh in-
14 terrogation techniques not listed in the Army Field
15 Manual, including stress positions, hooding, the use
16 of military dogs to exploit phobias, prolonged isola-
17 tion, sensory deprivation, and forcing Muslim men to
18 shave their beards.

19 (11) According to the “Article 15–6 Investiga-
20 tion of CJSOTF-AP [Combined Joint Special Oper-
21 ations Task Force-Arabian Peninsula] and 5th SF
22 [Special Forces] Group Detention Operation (For-
23 mica Report)” and Department of Defense docu-
24 ments released under the Freedom of Information
25 Act, Guantanamo Bay detainees were chained to the

1 floor, subjected to loud music, fed only bread and
2 water, and kept for some period of time in cells
3 measuring 4 feet by 4 feet by 20 inches.

4 (12) The March 2004 investigative report of
5 Major General Antonio Taguba documented "sadis-
6 tic, blatant and wanton criminal abuses" against de-
7 tainees at the Abu Ghraib detention facility, includ-
8 ing sexual and physical abuse, the threat of torture,
9 the forcing of detainees to perform degrading acts
10 designed to assault their religious identity, and the
11 use of dogs to frighten detainees.

12 (13) According to Department of Defense docu-
13 ments released under the Freedom of Information
14 Act, the United States Armed Forces held certain
15 Iraqis as "ghost detainees," who were "not ac-
16 counted for" and were hidden from the observation
17 of the International Committee of the Red Cross
18 (ICRC).

19 (14) Military autopsy reports and death certifi-
20 cates released pursuant to the Freedom of Informa-
21 tion Act revealed that at least 39 deaths, and prob-
22 ably more, have occurred among detainees in United
23 States custody overseas, approximately half of which
24 were homicides and 7 of which appear to have been

1 caused by “strangulation,” “asphyxiation” or fatal
2 “blunt force injuries”.

3 (15) On September 6, 2006, President George
4 W. Bush stated that he had authorized the incom-
5 municado detention of certain suspected terrorist
6 leaders and operatives at secret sites outside the
7 United States under a “separate program” operated
8 by the Central Intelligence Agency.

9 (16) President George W. Bush has authorized
10 the indefinite detention, without charge or trial, of
11 more than 700 individuals at Guantanamo Bay
12 Naval Base on the ground that they are “enemy
13 combatants” and therefore may be held until the
14 cessation of hostilities under the laws of war.

15 (17) Department of Justice lawyers, rep-
16 resenting President George W. Bush and the De-
17 partment of Defense in a Federal lawsuit brought on
18 behalf of Guantanamo detainees, took the unprece-
19 dented position that the term “enemy combatant”
20 could in theory justify the indefinite detention of a
21 “little old lady in Switzerland who writes checks to
22 what she thinks is [a] charity that helps orphans in
23 Afghanistan but is really a front to finance al-Qaeda
24 activities” and “a person who teaches English to the
25 son of an al Qaeda member”.

1 (18) After the Supreme Court in *Hamdi v.*
2 *Rumsfeld and Rasul v. Bush* rejected the claim that
3 an alleged “enemy combatant” could be detained in-
4 definitely without any meaningful opportunity to
5 challenge the designation, the Deputy Secretary of
6 Defense issued an order on July 7, 2004, creating
7 “Combatant Status Review Tribunals” (CSRTs) for
8 the stated purpose of “review[ing] the detainee’s sta-
9 tus as an enemy combatant”.

10 (19) Such Order—

11 (A) did not allow detainees to be rep-
12 resented by counsel in Combatant Status Re-
13 view Tribunal proceedings, but instead specified
14 that a “military officer” would be assigned to
15 “assist[]” each detainee and required such
16 military officers to inform the detainees that “I
17 am neither a lawyer nor your advocate,” and
18 that “[n]one of the information you provide me
19 shall be held in confidence”;

20 (B) allowed the detainee to be excluded
21 from attendance during review proceedings in-
22 volving “testimony or other matters that would
23 compromise national security if held in the
24 presence of the detainee”;

1 (C) allowed the decision-maker to rely on
2 hearsay evidence and specified that “[t]he Tri-
3 bunal is not bound by the rules of evidence such
4 as would apply in a court of law”; and

5 (D) specified that “there shall be a rebut-
6 table presumption in favor of the Government’s
7 evidence”.

8 (20) The Government has relied on the above
9 procedures to deprive individuals of their liberty for
10 an indefinite period of time without a meaningful
11 opportunity to confront and rebut the evidence on
12 which that detention is predicated.

13 (21) President George W. Bush and the De-
14 partment of Defense designated at least 2 United
15 States citizens as “enemy combatants,” claimed the
16 right to detain them indefinitely on United States
17 soil without charge and without access to counsel,
18 and argued that allowing meaningful judicial review
19 of their detention would be “constitutionally intoler-
20 able”.

21 (22) The Supreme Court established in *Hamdi*
22 *v. Rumsfeld* that meaningful review by a neutral de-
23 cisionmaker of the detention of United States citi-
24 zens is constitutionally required, that “the risk of an
25 erroneous deprivation of a citizen’s liberty . . . is

1 very real,” and that the Constitution mandates that
2 a United States citizen be given a fair opportunity
3 to rebut the Government’s “enemy combatant” des-
4 ignation.

5 (23) The administration, having consistently
6 claimed that according United States citizens des-
7 ignated as “enemy combatants” the due process pro-
8 tections accorded to criminal defendants in civilian
9 courts would jeopardize national security interests of
10 the utmost importance, elected to pursue criminal
11 charges against alleged “enemy combatant” Jose
12 Padilla in a civilian court after holding him in mili-
13 tary custody for 3 years.

14 (24) The administration, having contended that
15 alleged “enemy combatant” and United States cit-
16 izen Yaser Esam Hamdi was so dangerous that
17 merely allowing him to meet with counsel “jeopard-
18 izes compelling national security interests” because
19 he might “pass concealed messages through unwit-
20 ting intermediaries,” released Mr. Hamdi from cus-
21 tody after 3 years and allowed him to return to
22 Saudi Arabia.

23 (25) President George W. Bush issued “Mili-
24 tary Order of November 13, 2001, Detention, Treat-
25 ment, and Trial of Certain Non-Citizens in the War

1 Against Terrorism,” which authorized the creation
2 of military tribunals to try suspected al Qaeda mem-
3 bers and other international terrorist suspects for
4 violations of the law of war.

5 (26) Alberto R. Gonzales, as Counsel to the
6 President, in a November 30, 2001, newspaper edi-
7 torial, defended these military tribunals and
8 misleadingly represented that they would have ade-
9 quate procedural safeguards, by stating: “Everyone
10 tried before a military commission will know the
11 charges against him, be represented by qualified
12 counsel and be allowed to present a defense.”.

13 (27) The military tribunals’ procedural rules as
14 outlined in Military Commission Order No. 1, issued
15 on March 21, 2002, and as subsequently amended—

16 (A) permitted the accused and his civilian
17 counsel to be excluded from any part of the
18 proceeding that the presiding officer decided to
19 close, and never learn what was presented dur-
20 ing that portion of the proceeding;

21 (B) permitted the introduction of any evi-
22 dence that the presiding officer determined
23 would have probative value to a reasonable per-
24 son, thereby permitting the admission of hear-

1 say and evidence obtained through undue coer-
2 cion; and

3 (C) restricted appellate review of the com-
4 missions to a panel appointed by the Secretary
5 of Defense, followed by review by the Secretary
6 of Defense and a final decision by the Presi-
7 dent, with no provision for direct appeal to the
8 Federal courts for review by civilian judges.

9 (28) Nearly 5 years after the military order was
10 signed, the Supreme Court in *Hamdan v. Rumsfeld*
11 struck down the military commissions as unlawful,
12 finding that—

13 (A) the military commissions as con-
14 stituted were not expressly authorized by any
15 congressional act, including the Authorization
16 for Use of Military Force, the Uniform Code of
17 Military Justice (UCMJ), and the Detainee
18 Treatment Act;

19 (B) the military commission procedures
20 violated the UCMJ, which mandates that rules
21 governing military commissions be as similar to
22 those governing courts-martial “as practicable,”
23 and which affords the accused the right to be
24 present;

1 (C) the military commission procedures
2 violated Common Article 3 of the Geneva Con-
3 ventions, which is part of the “law of war”
4 under UCMJ Article 21 and requires trial in “a
5 regularly constituted court affording all the ju-
6 dicial guarantees which are recognized as indis-
7 pensable by civilized peoples”.

8 (29) President George W. Bush sought to pre-
9 vent the Guantanamo detainees from obtaining judi-
10 cial review of their indefinite confinement by claim-
11 ing that the writ of habeas corpus was categorically
12 unavailable to non-citizens held at Guantanamo Bay.

13 (30) The Supreme Court in *Rasul v. Bush*
14 squarely rejected this claim, holding that the legal
15 precedent on which the President relied “plainly
16 does not preclude the exercise of [statutory habeas]
17 jurisdiction” over the detainees’ claims, and that the
18 general presumption against extraterritorial applica-
19 tion of a statute, cited by the President, “certainly
20 has no application” with respect to detainees at
21 Guantanamo Bay where the United States exercises
22 “complete jurisdiction and control”.

23 (c) UNITED STATES ATTORNEY FIRINGS AND EXEC-
24 UTIVE PRIVILEGE.—The Senate finds the following:

1 (1) At least 9 United States Attorneys were
2 told in 2006 that they must step down under the au-
3 thority of President George W. Bush, who had the
4 final decision-making power in terminating the em-
5 ployment of United States Attorneys.

6 (2) Attorney General Alberto R. Gonzales and
7 subordinates under his supervision repeatedly misled
8 Congress and attempted to block legitimate congres-
9 sional oversight efforts concerning the firing of at
10 least nine United States Attorneys.

11 (3) Attorney General Alberto R. Gonzales re-
12 peatedly obscured the true scope of the firings, origi-
13 nally declining to cite a specific number of individ-
14 uals fired in his testimony on January 18, 2007, ac-
15 knowledging only seven in his USA Today op-ed
16 published on March 6, 2007, acknowledging eight
17 firings in his testimony on April 19, 2007, tacitly
18 conceding there had been nine individuals fired in
19 his testimony on May 10, 2007, and testifying on
20 July 24, 2007, that “there may have been others”
21 but he did not know the exact number.

22 (4) Attorney General Alberto R. Gonzales ini-
23 tially characterized the firings as “an overblown per-
24 sonnel matter,” claiming that the United States At-
25 torneys had lost his confidence and were fired for

1 “performance reasons” when many of those same in-
2 dividuals had received only the highest performance
3 reviews prior to their dismissal.

4 (5) Attorney General Alberto R. Gonzales testi-
5 fied before the Senate on January 18, 2007, that he
6 would “never, ever make a change in a United
7 States attorney for political reasons,” but in later
8 testimony on April 19, 2007, and July 24, 2007, ad-
9 mitted that he does not know who selected each indi-
10 vidual United States Attorney for firing or why they
11 were included on the list of United States Attorneys
12 to be fired.

13 (6) Prior to their selection for firing, both
14 former New Mexico United States Attorney David
15 Iglesias and former Washington United States At-
16 torney John McKay received inappropriate phone
17 calls from Members of Congress or their staffs re-
18 garding ongoing, politically sensitive investigations
19 and the White House received complaints about the
20 manner in which they were conducting those inves-
21 tigations.

22 (7) Attorney General Alberto R. Gonzales testi-
23 fied before the Senate on January 18, 2007, that he
24 would not fire a United States Attorney “if it would
25 in any way jeopardize an ongoing serious investiga-

tion,” but later testified, as did his subordinates, that concerns about whether ongoing investigations would be jeopardized were not explored prior to the firings and were specifically ignored when some fired United States Attorneys asked for a delay in their departure dates to allow them to wrap up ongoing investigations.

(8) Attorney General Alberto R. Gonzales publicly stated on March 13, 2007, that he was “not involved in seeing any memos, was not involved in any discussions about what was going on” regarding the process leading up to the firing of the United States Attorneys, but later testimony from his subordinates and documents released by the Department of Justice indicate that the Attorney General was, in fact, regularly briefed on the process and did receive at least one memo in November 2005 regarding the planned firings.

(9) Attorney General Alberto R. Gonzales publicly stated on May 15, 2007, that Deputy Attorney General Paul McNulty’s participation in the firing of the United States Attorneys was of central importance to the validity of the process and to the Attorney General’s decision to fire the specific individuals, but he had previously testified on April 19, 2007,

1 that he did not discuss the process with Mr. McNul-
2 ty prior to firing the United States Attorneys, and
3 that “looking back. . . I would have had the deputy
4 attorney general more involved, directly involved”.

5 (10) Attorney General Alberto R. Gonzales tes-
6 tified on May 10, 2007, that, after the start of the
7 congressional investigation into the firings, he had
8 refrained from discussing the firings with anyone in-
9 volved because he did not want to interfere with the
10 ongoing investigations, but former White House Li-
11 aison for the Department of Justice, Monica Good-
12 ling, testified on May 23, 2007, that the Attorney
13 General spoke with her in late March of 2007 and
14 “laid out . . . his general recollection . . . of some
15 of the process regarding the replacement of the
16 United States Attorneys.”

17 (11) Former White House Liaison for the De-
18 partment of Justice, Monica Goodling, also testified
19 on May 23, 2007, that she did not respond to what
20 Attorney General Alberto R. Gonzales said about his
21 recollection because “I did not know if it was appro-
22 priate for us to both be discussing our recollections
23 of what had happened, and I just thought maybe we
24 shouldn’t have that conversation.”

1 (12) President George W. Bush has consistently
2 stonewalled congressional attempts at oversight by
3 refusing to turn over White House documents relat-
4 ing to the firing of at least 9 United States Attor-
5 neys and refusing to allow current or former White
6 House officials to testify before Congress on this
7 matter, based on an excessively broad and legally in-
8 sufficient assertion of executive privilege.

9 (13) President George W. Bush has asserted
10 executive privilege in refusing even to turn over cor-
11 respondence between non-Executive Branch officials
12 and White House officials concerning the firings of
13 at least 9 United States Attorneys, even though such
14 communications could not reasonably be classified as
15 falling within the privilege.

16 (14) President George W. Bush has directed at
17 least two staff members, former and current, to ig-
18 nore congressional subpoenas altogether, ordering
19 former Counsel to the President Harriet Miers and
20 current Deputy Chief of Staff and Senior Adviser to
21 the President Karl Rove not to appear at Congres-
22 sional oversight hearings based on the assertion that
23 immediate presidential advisors are “immune from
24 compelled Congressional testimony about matters
25 that arose during [their] tenure,” rather than simply

1 instructing them to refrain from answering questions
2 that might be covered by a proper assertion of exec-
3 utive privilege.

4 (15) President George W. Bush has refused to
5 work to find a compromise with Congress or other-
6 wise accommodate legitimate congressional oversight
7 efforts, disregarding the proper relationship between
8 the executive and legislative branches and dem-
9 onstrating a belief that he and his Administration
10 are above oversight and the rule of law.

11 (d) MISLEADING STATEMENTS ON THE USA PA-
12 TRIOT ACT.—The Senate finds the following:

13 (1) President George W. Bush made misleading
14 claims during the course of the Administration's
15 2005 campaign to reauthorize the USA PATRIOT
16 Act of 2001, by suggesting that Federal officials did
17 not have access to the same tools to investigate ter-
18 rorism as they did to investigate other crimes.

19 (2) In 2005 the Federal Bureau of Investiga-
20 tion transmitted to Attorney General Alberto R.
21 Gonzales multiple reports of violations of law in con-
22 nection with provisions of the USA PATRIOT Act
23 and related authorities, including unauthorized sur-
24 veillance and improper collection of communications

1 data that were serious enough to require notification
2 of the President's Intelligence Oversight Board.

3 (3) Despite these reports, Attorney General
4 Alberto R. Gonzales told Congress and the American
5 people in the course of the Administration's 2005
6 campaign to reauthorize the USA PATRIOT Act of
7 2001 that "[t]he track record established over the
8 past three years has demonstrated the effectiveness
9 of the safeguards of civil liberties put in place when
10 the Act was passed," that "[t]here has not been one
11 verified case of civil liberties abuse," and that "no
12 one has provided me with evidence that the Patriot
13 Act is being abused or misused".

14 (4) The United States Department of Justice
15 sent a 10-page letter to Congress dated November
16 23, 2005—

17 (A) stating that a November 6, 2005,
18 Washington Post story detailing the Federal
19 Bureau of Investigation's use of National Security
20 Letters was a "materially misleading portrayal"
21 full of "distortions and factual errors";

22 (B) defending its use of National Security
23 Letters by pointing to the Department's "robust
24 mechanisms for checking misuse," "significant
25 internal oversight and checks," and re-

1 ports to Congress regarding the number of Na-
2 tional Security Letters issued; and

3 (C) stating that the November 6, 2005,
4 Washington Post story was inaccurate in stat-
5 ing that “The FBI now issues more than
6 30,000 National Security Letters a year, ... a
7 hundredfold increase over historic norms.”.

8 (5) On March 9, 2007, the Inspector General
9 for the United States Department of Justice issued
10 a report on the Federal Bureau of Investigation’s
11 use of National Security Letters from 2003 through
12 2005—

13 (A) that the Inspector General said found
14 “widespread and serious misuse of the FBI’s
15 national security letter authorities” that “in
16 many instances . . . violated NSL statutes, At-
17 torney General Guidelines, or the FBI’s own in-
18 ternal policies,” and found that “the FBI did
19 not provide adequate guidance, adequate con-
20 trols, or adequate training on the use of these
21 sensitive authorities”; and

22 (B) that indicated the Federal Bureau of
23 Investigation issued approximately 39,000 Na-
24 tional Security Letter requests in 2003, 56,000
25 National Security Letter requests in 2004, and

1 47,000 National Security Letter requests in
2 2005.

3 (6) The United States Department of Justice
4 sent a letter on March 9, 2007, to Congress, admit-
5 ting that it had “determined that certain statements
6 in our November 23, 2005 letter need clarification”
7 in light of the Inspector General’s findings and that
8 “the reports [The Department of Justice] provided
9 Congress in response to statutory reporting require-
10 ments did not accurately reflect the FBI’s use of
11 NSLs”.

12 (e) SIGNING STATEMENTS.—The Senate finds the
13 following:

14 (1) President George W. Bush has lodged more
15 than 800 challenges to duly enacted provisions of
16 law by issuing signing statements that indicate that
17 the President does not believe he must comply with
18 such provisions of law.

19 (2) Such signing statements effectively assign
20 to the executive branch alone the decision whether to
21 fully comply with the laws that Congress has passed.

22 (3) On December 30, 2005, President George
23 W. Bush signed the Department of Defense Emer-
24 gency Supplemental Appropriations to Address Hur-
25 ricanes in the Gulf of Mexico, and Pandemic Influenza

1 enza Act, 2006, title X of which prohibits the Gov-
2 ernment from subjecting any individual “in the cus-
3 tody or under the physical control of the United
4 States Government, regardless of nationality or
5 physical location” to “cruel, inhuman, or degrading
6 treatment or punishment”.

7 (4) President George W. Bush issued a signing
8 statement to such Act that suggested he believed he
9 did not have to comply with the prohibition on tor-
10 ture and cruel, inhuman and degrading treatment,
11 stating: “The executive branch shall construe Title
12 X in Division A of the Act, relating to detainees, in
13 a manner consistent with the constitutional author-
14 ity of the President to supervise the unitary execu-
15 tive branch and as Commander in Chief and con-
16 sistent with the constitutional limitations on the ju-
17 dicial power, which will assist in achieving the
18 shared objective of the Congress and the President,
19 evidenced in Title X, of protecting the American
20 people from further terrorist attacks.”.

21 (5) On March 9, 2006, President George W.
22 Bush signed the USA PATRIOT Improvement and
23 Reauthorization Act of 2005, which requires that
24 the executive branch furnish reports to Congress on
25 certain surveillance activities.

1 (6) President George W. Bush issued a signing
2 statement to such Act that suggested he believed he
3 did not have to comply fully with these reporting re-
4 quirements, stating: “The executive branch shall
5 construe the provisions of H.R. 3199 that call for
6 furnishing information to entities outside the execu-
7 tive branch, such as sections 106A and 119, in a
8 manner consistent with the President’s constitu-
9 tional authority to supervise the unitary executive
10 branch and to withhold information the disclosure of
11 which could impair foreign relations, national secu-
12 rity, the deliberative processes of the Executive, or
13 the performance of the Executive’s constitutional du-
14 ties.”.

15 (7) On December 20, 2006, President George
16 W. Bush signed the Postal Accountability and En-
17 hancement Act, which protects certain classes of
18 sealed domestic mail from being opened except in
19 specifically defined circumstances.

20 (8) President George W. Bush issued a signing
21 statement to such Act that suggested he believed he
22 did not have to comply with this provision, stating:
23 “The executive branch shall construe subsection
24 404(c) of title 39, as enacted by subsection 1010(e)
25 of the Act, which provides for opening of an item of

1 a class of mail otherwise sealed against inspection,
2 in a manner consistent, to the maximum extent per-
3 missible, with the need to conduct searches in exi-
4 gent circumstances, such as to protect human life
5 and safety against hazardous materials, and the
6 need for physical searches specifically authorized by
7 law for foreign intelligence collection.”

8 (9) The American Bar Association Task Force
9 on Presidential Signing Statements and the Separation
10 of Powers Doctrine concluded that President
11 George W. Bush’s misuse of signing statements
12 “weaken[s] our cherished system of checks and bal-
13 ances and separation of powers”.

14 **SEC. 2. CENSURE BY THE SENATE.**

15 The Senate censures George W. Bush, President of
16 the United States, and Alberto R. Gonzales, Attorney
17 General of the United States, and condemns their lengthy
18 record of—

19 (1) undermining the rule of law and the separa-
20 tion of powers;

21 (2) disregarding statutes, treaties ratified by
22 the United States, and the Constitution; and

23 (3) repeatedly misleading the American people.